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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,376	08/25/2000	David W. Cannell	05725.0633-00	5418

22852 7590 06/04/2003

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WASHINGTON, DC 20005

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/04/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/648,376

Applicant(s)

CANNELL ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 27-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-26 and 50-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on March 14, 2003 has been entered.

Applicants' election with traverse in paper No. 5 is presumed to carry over to the instant RCE since applicants have not indicated a contrary intention. Claims 4, and 27-49 are withdrawn from consideration as directed to non-elected invention or species.

The claim have been examined insofar as they read on the elected invention and species.

### ***Claim Rejections 35 U.S.C. 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-26, and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 5,799,456, IDS) in view of Cauwet et al. (US 5,656,258, of record), Grollier et al. (US 5,958, 392).

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Dubief teach a cosmetic composition comprising ceramide compounds and a cationic polymer. The composition is particularly useful for protecting hairs. See, particularly, the abstract, and the claims. The elected ceramide and cationic polymer are particularly employed in a composition. See, particularly, example 7. The composition may further comprise other well-known cosmetic ingredients, such as thickener, preservatives, etc. The composition may be in various forms, such as liquid, cream, gel. The composition may be used before or after shampoo, perm, bleaching or dyeing. See, particularly, columns 8-9.

Dubief does not teach expressly the employment of amphoteric polymer in the composition, or polyquaternium-22, also known as MERQUAT 280.

However, Grollier et al. teaches the employment of a combination of cationic polymer and amphoteric polymer in hair cosmetic composition. Such combination has many over come many disadvantages of compositions using cationic polymer alone or using other combination. See, particularly, column 1, lines 16-59, and the claims. Among the disclosed amphoteric polymers are copolymers of acrylic acid and dialkylaminoalkyl acrylamide. See, column. 2, line 20 to column 6, lines 20. The cation polymers include the polymer herein elected. See, particularly, column 6, lines 21 to column 12, line 30. The molecular weight of the polymers are 500 to 2,000,000, and the amounts of such polymers employed in the cosmetic composition are 0.01 to 10% by weight. See, particularly, the claims. Cauwet et al. teaches that polyquaternium-22, or MERQUAT 280 is a known amphoteric copolymer of acrylic acid and dialkylaminoalkyl acrylamide, and is particularly useful in hair treating composition with cation polymers. Cauwet also teach the benefit of combination of cation polymer and amphoteric polymer in hair treating

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composition. See, particularly, the abstract, column 1, lines 49 bridging to column 2, line 65, column 3, lines 1-38, column 6, lines 10-28.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ a combination of the cation polymer and the amphoteric polymer herein in Dubief' composition.

A person of ordinary skill in the art would have been motivated to employ a combination of the cation polymer and the amphoteric polymer herein in Dubief' composition because of the advantage of the combination of cation polymer and amphoteric polymer disclosed by Grollier et al. and Cauwet et al. Further, making a kit comprising the composition herein and other hair treating composition, such as hair dyeing composition is obvious to one of ordinary skill in the art because such composition is known to be particularly useful before or after other hair treatment.

Applicants' amendments and remarks submitted March 14, 2003 have been fully considered, but are moot in view of the new ground rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner

**SHENGJUN WANG**  
**PATENT EXAMINER**

Shengjun Wang

May 20, 2003